Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Developing a Unified Intercarrier	)	CC Docket No. 01-92
Compensation Regime	)	

Initial Comments of TCA

I. Introduction

TCA, Inc. - Telcom Consulting Associates ("TCA") hereby submits these comments in response to the FCC's Notice of Proposed Rulemaking ("NPRM") regarding intercarrier compensation. The FCC has initiated this NPRM to reexamine all currently regulated forms of intercarrier compensation. The FCC proposes to move forward from the transitional intercarrier compensation regimes to a more permanent regime that consummates the pro-competitive vision of the Telecommunications Act of 1996 ("1996 Act").[1] Finally, the FCC proposes a bill-and-keep regime as the appropriate vehicle with which to achieve an equitable unified regime.

TCA is a consulting firm, which performs financial, regulatory and marketing services for over fifty small, rural LECs throughout the United States. TCA's clients derive a significant portion of their revenues from intercarrier compensation and therefore will be directly impacted by the FCC's actions in this proceeding. These comments address the concerns of TCA's clients.

[1] NPRM ¶ 1

II. The NPRM is Premature -- FCC Must First Complete Reform of the Existing Regime.

The FCC has correctly identified the problem – the current intercarrier compensation system treats different types of carriers and different types of services disparately, even though no significant difference in costs exists among the carriers or services.[2] The current system, which categorizes existing compensation arrangements as either access charges (for long distance traffic) or reciprocal compensation (for local traffic), is a relic from the days when the wireline provider was the sole provider of telecommunications services. The evolution of the Internet and wireless services has blurred the distinctions between technologies and has significantly changed the communications industry. Unfortunately, the regulatory environment has not kept pace. This has resulted in regulatory arbitrage and has advantaged some providers and services over others. The FCC has exacerbated this problem by granting exceptions to various technologies to encourage growth in their infancy. However, once granted, this preferential treatment is never revoked.[3] Any future regime must recognize that different technologies will compete for the same customers and accordingly, a competitively neutral compensation system is absolutely necessary.

However, before the FCC embarks on the creation of a new unified regime for intercarrier compensation, it should finish uncompleted reform on the existing regime. While the FCC has completed access charge reform for LECs subject to price cap regulation,[4] it has been over three years since the FCC also recognized that access reform was necessary for LECs subject to rate-of-return regulation ("RoR LECs") because their existing high per-minute rates place them at a competitive disadvantage.[5] Further, the FCC is currently considering a proposal

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[2] NPRM ¶ 5

[3] For example, since 1983 the FCC has consistently and consciously permitted enhanced service providers, a category that includes Internet service providers, to connect their customers using local business lines. Enhanced service providers use interstate access but pay local business exchange service rates instead of interstate access charges. *See e.g., MTS and WATS Market Structure*, 97 FCC 2d 682, 715, para. 83 (1983).

[4] *Access Charge Reform, Price Cap Performance for Local Exchange Carriers, Low-Volume Long Distance Users, Federal-State Joint Board on Universal Service*, CC Docket No. 96-262 *et al*., Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, FCC00-193 (released May 31,2000) (the "CALLS" order).

[5] *Access Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation*, Notice of Proposed Rulemaking, CC Docket No. 98-77, FCC 98-101 (released June 4, 1998)

to significantly reduce the composite access rates (from 3.94 cents to 1.6 cents) of RoR LECs.[6] The access reform proposal in the MAG plan accomplishes the FCC's stated objective – a rate structure more in line with cost-causation principles. The lower access rates envisioned by the MAG plan will greatly reduce the economically inefficient incentives for competitors to pursue high-volume users and help ensure that all customers will benefit from competition. Final resolution of modifications to the existing regime would provide a foundation from which rural LECs could reasonably comment regarding future regimes.

III. Elimination of Intercarrier Compensation Should Not be the Standard for a New Unified Compensation Regime.

The FCC proposes a bill-and-keep arrangement to resolve interconnection problems. Under a bill-and-keep arrangement, there are no termination charges and accordingly, each carrier is required to recover the cost of local facilities from its own customers.[7] The FCC asserts that a bill-and-keep regime would 1) allow regulators to avoid difficult decisions, 2) be more efficient and 3) reduce regulatory arbitrage.

While a bill-and-keep regime is appropriate for carriers in certain circumstances, mandatory imposition of this system could prove devastating for many rural LECs. For example, carriers with networks of comparable cost, exchanging comparable amounts of traffic with limited transport distances would probably benefit from a bill-and-keep arrangement. This arrangement would also significantly lessen the need for regulatory involvement. However, this does not describe the current situation in which many rural LECs find themselves. Due to the sparsely populated areas they serve, the cost of their networks on a per customer basis exceeds that of urban LECs. Furthermore, their transport distances are typically far greater than those of urban providers.

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[6] *In the Matter of the Federal-State Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price cap Incumbent Local Exchange Carriers and Interexchange Carriers,* Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45 and Order in CC Docket No. 00-256, FCC 01-157 (rel. May 23, 2001).

[7] NPRM ¶ 9

The FCC argues that the current regime lacks fairness because it requires the calling party to incur all the costs of the call, while the called party incurs none. Accordingly, the FCC asserts that because both parties benefit from the call, each should absorb a portion of the cost. While the FCC is partially correct, in many situations both parties benefit from the call, the FCC's proposed regime would require the rural recipient of the call to bear a far greater cost of the call than the urban initiator. Not only would this be patently unfair, it also fails to comply with the mandate of the 1996 Act – that rural and urban customers receive comparable services at comparable rates.[8]

While the allocation of joint costs is a difficult task, it is not a valid reason to excuse regulators from their responsibility. Regulators must find an equitable method for ensuring that both parties pay a reasonably comparable portion of the aforementioned call. Allocation of common costs is a key component of the solution. However, when carriers can mutually agree that a bill-and-keep arrangement is appropriate, regulators should cede this responsibility to the carriers.

Efficiency should not be the *primary* goal of an intercarrier compensation system. If efficient deployment of network resources were the sole goal of telecommunications policymakers, customers in many high cost rural areas would simply not be provided any service. TCA agrees that eliminating billing and collecting of other carriers as envisioned by a bill-and-keep regime is more administratively efficient. Taken to the extreme, eliminating all billing and collecting would be even more administratively efficient, however, carriers may find it difficult to remain in business, despite the tremendous increase in administrative efficiency.

The FCC is correct, in identifying the elimination of regulatory arbitrage as a goal of any new intercarrier compensation regime. However, this should not necessitate the elimination of intercarrier compensation. Regulatory arbitrage can be eliminated by mandating that a unified rate be charged to all interconnecting carriers, regardless of the technology they employ.

[8] § 254(b)(3)

IV. The FCC Must Consider a Different Approach for Rural LECs.

It is true that a single, unified rate for carrier compensation is necessary to avoid regulatory arbitrage. However, it is far from clear that the appropriate rate is zero, as it would be under a bill-and-keep regime. Rural LECs incur much higher costs than non-rural LECs to connect their customers to the ubiquitous, national network.[9] These greater per customer costs (due primarily to the lack of economies of scale and density) represent legitimate investments. They are *not* the result of poor planning or economic inefficiencies. Rural LECs cannot be simply told to negotiate fair division of responsibility of these costs with substantially larger carriers. It is not too difficult to predict the outcome of "negotiations" of this nature.

Reciprocal compensation should not be confused with identical compensation. The FCC has affirmed this principle by permitting wireless providers to recover their "additional costs" of interconnection.[10] The higher costs incurred by rural LECs to connect their customers to the network clearly meet this broader definition. Accordingly, RoR LECs should be afforded the same cost recovery opportunity. In other words, RoR LECs should be allowed to charge a unified rate to all carriers for interconnection. By definition, this rate would be identical. Carriers seeking a higher interconnection rate would be required to cost justify the rate, using their own costs, to the appropriate regulatory body. This would eliminate regulatory arbitrage and allow the most efficient provider to prevail.

The 1996 Act clearly envisions individual carriers charging different interconnection rates. Congress recognized the negative impact on universal service of requiring customers in high cost areas to pay the entire cost of the local network, and in response, required providers of interexchange services to charge averaged long distance rates.[11] In other words, customers in rural and urban rates must be charged the same rates, based upon an averaging of the interexchange carrier's nationwide costs of interconnection.

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9 *The Rural Difference*, Rural Task Force White Paper 2, Jan. 2000.
10 Letter from Thomas Sugrue, Chief, Wireless Telecommunications Bureau and Dorothy Attwood, Chief, Common Carrier Bureau to Charles McKee, Senior Attorney, Sprint PCS, CC Docket Nos. 95-185 and 96-98 and WT Docket No. 97-207, May 9, 2001.
11 § 254(g)

V. Before Imposing Mandatory Bill and Keep Regime, the FCC must consider the Impact on the Intrastate Jurisdiction.

Implementing a mandatory bill and keep arrangement in the federal jurisdiction would clearly shift a significant portion of RoR LEC costs from the interstate to the state jurisdiction. Before such a jurisdictional shift of costs may occur, the 1996 Act requires the FCC to first refer the matter to the Federal-State Joint Board on Separations.[12] This has yet to occur, indicating this NPRM is an improper preemption of State commission jurisdiction.

Frankly, it is difficult to conceive how a bill-and-keep regime could be implemented in the federal jurisdiction without a similar change in the state jurisdiction. Absent implementation in both jurisdictions, the FCC would be creating more opportunities for regulatory arbitrage than the adoption of such a regime purports to eliminate. Under a dual system of intercarrier compensation, carriers would have a very large incentive to identify terminating traffic as interstate to avoid paying compensation.

Implementing a bill-and-keep regime in the intrastate jurisdiction would require end users to absorb even more costs than in the interstate jurisdiction. This would have a devastating impact on universal service in high cost areas. Policy changes, which detrimentally impact universal service, are required by the 1996 Act to be referred by the FCC to the Federal-State Joint Board on Universal Service. Again, the FCC has sought no such referral for this NPRM, improperly preempting State commission jurisdiction.

Instead of mandating a bill-and-keep regime the FCC should incent carriers to elect such an arrangement. As stated previously, bill-and-keep arrangements are the most appropriate approach under certain, specific circumstances. The FCC could assist in promoting this market-oriented solution by significantly lessening regulatory involvement once both parties agree that a bill and keep arrangement is appropriate for their situation.

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[12] § 410(c)

V. Conclusion

The FCC's issuance of this NPRM is premature. The FCC should complete reform of the existing intercarrier compensation proceeding before promulgating a new regime. While a bill-and-keep arrangement may be appropriate under certain specific circumstances, it should not be the underpinning for a new federal intercarrier compensation regime. Mandatory imposition of a bill-and-keep regime on rural LECs would prevent them from recovering their higher costs of providing service. Instead of eliminating interconnection charges, the FCC should strive for the appropriate goal of a single unified rate.

Respectfully submitted,

[electronically filed]

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August 21, 2001